

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

**CHERYL ANN LEACH and Husband,
JOHN LEACH, SR.**

Plaintiffs,

v.

MAC’S CONVENIENCE STORES, LLC,

Defendant.

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No. 3:21-cv-159

JURY DEMANDED

NOTICE OF REMOVAL

Without submitting to the jurisdiction of this Court and without waiving any available defenses, including, without limitation, lack of jurisdiction, improper venue, statute of limitations, insufficient process, or insufficient service of process, Defendant Mac’s Convenience Stores, LLC (hereinafter “Mac’s Convenience Stores”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby files this Notice of Removal of the above-described action to the United States District Court for the Eastern District of Tennessee at Knoxville from the Circuit Court for Monroe County, Tennessee, where the action is now pending and states as follows:

1. This cause of action was commenced in the Circuit Court for Monroe County, Tennessee on July 9, 2020.

2. This is a civil action for damages arising out of alleged injuries sustained in a fall accident at the Circle K gas station located at 708 South Main Street in Sweetwater, Tennessee.

3. The Complaint demands a judgment “in an amount the jury feels is just and reasonable.” (Compl.). The Plaintiffs did not demand a specific monetary amount in the Complaint. (Compl.).

4. On September 3, 2020, the Circuit Court for Monroe County entered an Order dismissing Circle K Stores, Inc. as an improperly and misjoined defendant. (Exhibit 1). Mac's Convenience Stores, LLC was the sole remaining party defendant.

5. Mac's Convenience Stores filed an Answer, and the parties proceeded with discovery. (Exhibit 1).

6. On March 29, 2021, the Plaintiffs sent the settlement demand letter attached hereto as Exhibit 2 to Mac's Convenience Stores for \$158,466.00. The Plaintiffs' settlement demand was Mac's Convenience Stores' first notice the Plaintiffs were seeking more than \$75,000.00, exclusive of interest and costs, in this lawsuit.

7. The United States District Court for the Eastern District of Tennessee at Knoxville has jurisdiction by reason of diversity of citizenship of the parties.

8. This suit is between citizens of different states. At the time of the commencement of this action in state court and since that time, the Plaintiffs were and are citizens of Monroe County, Tennessee. (Compl. ¶ 1).

9. Defendant Mac's Convenience Stores, LLC is a limited liability company organized under the laws of Delaware. The citizenship of a limited liability company for purposes of diversity jurisdiction is the citizenship of its members. *Delay v. Rosenthal Collins Group, Inc.*, 585 F.3d 1003, 1005 (6th Cir. 2009). None of the members of Mac's Convenience Stores, LLC are citizens of Tennessee. Therefore, Mac's Convenience Stores, LLC is not a citizen of Tennessee.

10. The matter in dispute exceeds \$75,000.00, exclusive of interest and costs, based on the Plaintiffs' settlement demand letter for \$158,466.00. (Exhibit 2); *see Santos-Tiller v. Krispy Kreme Doughnut Corp.*, 2016 U.S. Dist. LEXIS 112786, at *7 (E.D. Mich. Aug. 24, 2016) ("Plaintiff's \$117,500 settlement demand is a clear indication that she values her claim

above \$75,000.”) (citing *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008); *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002)); *see also* *Butler v. Rue 21, Inc.*, 2011 U.S. Dist. LEXIS 25127, at *19-20 (E.D. Tenn. Mar. 11, 2011) (denying remand where the plaintiff submitted a \$365,000 settlement demand). Accordingly, the jurisdictional amount is satisfied in this case.

11. This Notice is timely filed pursuant to 28 U.S.C. § 1446(b)(1) as the settlement demand letter is an “other paper” contemplated by 28 U.S.C. § 1446(b)(3). *Santos-Tiller*, 2016 U.S. Dist. LEXIS 112786, at *7; *Butler*, 2011 U.S. Dist. LEXIS 25127, at *20.

12. A copy of all pleadings and Orders served upon Mac’s Convenience Stores are filed with this Notice and attached hereto as Exhibit 1.

13. Mac’s Convenience Stores will give written notice of the filing of this Notice as required by 28 U.S.C. § 1446(d).

14. A copy of this Notice will be filed with the Clerk of the Circuit Court for Monroe County, Tennessee as required by 28 U.S.C. § 1446(d).

WHEREFORE, Mac’s Convenience Stores requests this action proceed in this Court as an action properly removed to it.

Dated this the 28th day of April, 2021.

Respectfully submitted,

CARR ALLISON

By: /s/ Chancey R. Miller

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2021, I electronically filed this **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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